

IOWA PUBLIC INFORMATION BOARD[497]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 23.6, the Iowa Public Information Board hereby gives Notice of Intended Action to amend Chapter 2, “Complaint Investigation and Resolution Procedures,” and to adopt new Chapter 10, “Injunction Request Procedure,” Iowa Administrative Code.

Iowa Code section 23.5(3) permits a person to remove from district court to the Board a proceeding concerning an injunction to prevent inspection of a public record. These amendments implement the procedure for the Board when the proceeding has been removed from district court to the Board.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 1, 2016, by contacting Charlie Smithson, Executive Director, Iowa Public Information Board, Wallace State Office Building, Third Floor, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by e-mail to Charlie.Smithson@iowa.gov.

The proposed amendments do not contain specific waiver provisions, but are subject to requests for waiver under 497—Chapter 9.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 23.5(3).

The following amendments are proposed.

ITEM 1. Amend subrule 2.1(1) as follows:

2.1(1) Form. A complaint shall be written and signed by the person filing the complaint on forms provided by the board or shall be submitted electronically via the board’s Web site. The complaint shall allege a violation of Iowa Code chapter 21 or 22; provide specific facts in support of the allegation, including the identification of persons and government entity involved in the alleged violation; and provide the specific relief sought. A complaint involving an injunction under Iowa Code section 23.5(3) shall be filed and conducted in accordance with the provisions set out in 497—Chapter 10.

ITEM 2. Adopt the following **new** 497—Chapter 10:

CHAPTER 10

INJUNCTION REQUEST PROCEDURE

497—10.1(23) Complaint. As provided in Iowa Code section 23.5(3), when a request for an injunction to enjoin the inspection of a public record has been filed in district court under Iowa Code section 22.8, the respondent or the person requesting access to the record may remove the proceeding from district court to the board by filing a complaint within 30 days of the commencement of the judicial proceeding. The complaint shall detail the parties involved, the records sought, and the district court in which the matter was originally filed. A copy of the original court filing seeking an injunction shall be filed with the complaint. A complaint filed under this chapter is not a “complaint” triggering the procedures under 497—Chapter 2.

497—10.2(23) Notice to court. Upon receipt of a complaint under this chapter, the board’s staff shall file notice with the appropriate district court that the complaint has been filed with the board.

497—10.3(23) Staff review. If the court issues an order removing jurisdiction of the matter to the board, the board’s staff shall conduct an initial review of the complaint and may request that the parties provide further information or documents.

497—10.4(23) Hearing. A hearing on the request for the injunction shall be heard before the board. The board may require briefs or the filing of other documents. The board shall work with the parties in establishing guidelines for the time of the hearing, the length of arguments, and any other procedural matters. A hearing under this rule is not a contested case under 497—Chapter 4.

497—10.5(23) Board determinations. The board shall make the following determinations after hearing:

1. Whether the requested records are public records or confidential public records.
2. If the records are public records, whether an injunction should be issued enjoining the inspection of the records under the criteria set out in Iowa Code sections 22.8(1) and 22.8(3).

497—10.6(23) Judicial review. The board's determinations under rule 497—10.5(23) are deemed final agency action for purposes of seeking judicial review under Iowa Code chapter 17A.

This chapter is intended to implement Iowa Code section 23.5(3).